

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

MFA.No. 1031 of 2001()

OA.103/1998 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANT:

BADAR, S/O.CHERUKUTTY ROWTHER,
RESIDING AT CHOOLPARAMBA, THOLANUR AMSOM, ALATHUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITAMBARESH

RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, GOVERNMENT OF KERALA, TRIVANDRUM.
2. CUSTODIAN OF VESTED FORESTS,
ARANYA BHAVAN, FOREST COMPLEX,
OLAVAKKODE, PALAKKAD.

BY ADV. SPL.GOV.T.PLEADER (FOREST) SRI.M.P.PRAKASH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1031 OF 2001

Dated this the 5th day of September, 2007

JUDGMENT

Koshy, J.

The appellant filed an application under Section 8 of the Kerala Private Forests (Vesting and Assignment) Act (in short, 'the Act') for a declaration that the 72 ½ cents comprising in survey No.195/A of Cholannur Amsom Desom, Kuthannur-II Village of Alathur Taluk of Palakkad District is not a private forest vested in the Government as the applicant is entitled to the exemptions granted by sub sections 2 and 3 of Section 3 of the Act.

2. To prove that the petitioner has got title, they produced Exhibits A1 and A2. But those title deeds were with regard to the property in Sy.No.98/4. A Commission was appointed to identify the property. In paragraph 16 of the order the Tribunal has considered the Commission report and found as follows:

“16. The survey number of the property is admittedly 195/A. What can be gathered from Exhibit .C1 is that there is no dispute with regard to the schedule property on the ground. In Exhibit .C1 the commissioner reported that the schedule property falls within the survey No.195/A of Kuthannur-I Village. The applicant applied for the remittance of

the commissioners report to report whether the schedule property falls within the description given in the title deeds of the applicant. The commissioners report shows that the applicant did not provide a legible copy of Exhibit A3 = Exhibit A4 so as to enable the commissioner to measure the property in accordance with it. The commissioner reported that when the extent of the property transferred by Exhibit A3 is 1 acre 18 cents the total of the O A schedule and the portion of the property sold from the property obtained by Exhibit A3 to Smt.Leelamma/Ponnamma comes to one acre 12 cents. No explanation was forthcoming from the applicane with regard to the variatin in extent. Likewise when the commissioner found the extent of the property as 76 cents (paragraph b page 3 of Exhibit C3) the petitioner did not apply for leave to amend the extent of the schedule property from 72 ½ to 76. For that too no explanation is forthcoming. Paragraph 5 of Exhibit C3 shows that the commissioner was requested to identify whether the schedule property is item No. 6 and 7 in Exhibit A2. The commissioner reported that the extent stated in Exhibit A2 is only 86 cents where as the extent in Exhibit A3 works out to be 1 acre 18 cents. That shows that the commissioner was unable to identify the property on the basis of Exhibit A2. The commissioner reported that he was unable to measure the property as the Pathirikkad paramba bounding item No.6 of Exhibit A2 could not be located.

3. Exhibit C3 report also shows that the Commissioner was unable to identify the property. It is contended by learned counsel for the appellant that the Commissioner was not able to identify the property because the original title deeds produced were turned into pieces and therefore registration copy was subsequently produced.

In fact his application was rejected not because the original document produced were old and turned into pieces, but the survey number as well as the extent of property mentioned in Exhibits A1 and A2 title deeds are different from the property scheduled in the petition. Therefore, production of registration copy of partition and appointment of second commission will not in any way help the matter. Since the Commissioner was not able to identify the property and the petitioner has produced title deeds in respect of the property lying in another survey number, the Forest Tribunal dismissed the application. On the basis of the evidence the Tribunal also found that the schedule property is covered by the MPPF Act and it is part of forest extending more than 100 acres. We fully agree with the view of the Forest Tribunal. The appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO. 1031 OF 2001

JUDGMENT

5.9.2007